

**Congress of the United States**  
**Washington, DC 20515**

October 29, 2020

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Administrator Verma:

We appreciate the steps the Centers for Medicare and Medicaid Services (CMS) has taken since the onset of the public health emergency to provide guidance, assistance, and support to ensure providers are able to continue serving Americans and their families. As we have witnessed, no single state or community has been impacted in the same way, and the flexibilities that CMS has provided during this time have been critical in ensuring continuity of care and allowing providers to adapt to realities as they exist on the ground.

This is particularly true of the flexibilities you have provided to states through approval of their respective Appendix K emergency preparedness response plans, which has allowed states to adapt their Home and Community-Based Services (HCBS) programs under the Medicaid program. Through those plans, CMS has approved requests from states to issue retainer payments to qualifying HCBS providers that are unable to provide routine services during this time.

However, CMS places a ceiling on the number of days in which states are allowed to provide these payments. While we appreciate the agency's action earlier this year to extend that limit beyond the initial 30-day period, indicating that states may authorize these payments up to three, 30-day periods (for a total of 90 days), many providers are continuing to face hurdles to a full return, particularly due to the challenges of serving a population that the Centers for Disease Control and Prevention indicates may be at increased risk of severe illness from COVID-19. As the public health threat posed by COVID-19 remains acute, we ask that CMS use its regulatory authority to extend for the duration of the national public health emergency the time in which these payments can be utilized by states who receive approval from CMS and elect to do so.

As you know, HCBS providers deliver a wide range of home health, personal care, educational, and support services for targeted population groups, including individuals with intellectual and developmental disabilities (IDD), physical disabilities, and mental illness. That community-based approach to care often means that these services must be provided in person, making providers' ability to continue to serve the IDD community particularly vulnerable to the challenges caused by the spread of COVID-19. True to their name, many HCBS providers are small, local nonprofits who are almost entirely funded under Medicaid and operate on already-thin margins. These retainer payments have served as a valuable line of support for providers who are unable to provide

comparable services, many of whom lack the infrastructure to provide for these services remotely, or the nature of whose services cannot be conducted virtually. These payments have helped state agencies administering their Medicaid programs stabilize their HCBS provider networks so that lapses in funds do not mean these providers are forced to close their doors for good.

We must stress, CMS's action to extend the time limits for these reimbursements would *not* require any state to provide retainer payments; it simply would give states whose provider networks remain at risk of permanent closure the continued flexibility to evaluate their needs and determine how best to support them. Further, guardrails that CMS already has in place will ensure that federal support from other programs, like the U.S. Small Business Administration's Paycheck Protection Program, is not duplicated.

We know our nation's HCBS providers remain eager to serve our communities and have continued to look for creative and strategic ways to serve individuals through Medicaid-supported programs. But when the option for them to do so is limited or non-existent, these payments have served as critical lifelines, and we ask that CMS act to further this important relief mechanism by allowing states the ability to continue utilizing this option.

Thank you for your attention to this important matter, and we are grateful for the Agency's continued partnership in ensuring that in a time fraught with uncertainty, providers furnishing these critical services in our communities will be able to do so in the future.

Sincerely,

Rob Woodall  
Member of Congress

Kathleen M. Rice  
Member of Congress

Debbie Dingell  
Member of Congress

Brian Fitzpatrick  
Member of Congress

/s/ Austin Scott  
Member of Congress

/s/ John Katko  
Member of Congress

/s/ Susan Wild  
Member of Congress

/s/ Max Rose  
Member of Congress

/s/ Sean Patrick Maloney  
Member of Congress

/s/ Brian Higgins  
Member of Congress

/s/ Ed Perlmutter  
Member of Congress

/s/ Sheila Jackson Lee  
Member of Congress

/s/ Mark DeSaulnier  
Member of Congress

/s/ Earl L. “Buddy” Carter  
Member of Congress

/s/ Joe Courtney  
Member of Congress

/s/ Christopher H. Smith  
Member of Congress

/s/ David B. McKinley, P.E.  
Member of Congress

/s/ James R. Langevin  
Member of Congress

/s/ A. Drew Ferguson, IV  
Member of Congress

/s/ David Scott  
Member of Congress

/s/ Doug Collins  
Member of Congress

/s/ Steve Stivers  
Member of Congress

/s/ Diana DeGette  
Member of Congress